

104TH CONGRESS
1ST SESSION

H. R. 39

To amend the Magnuson Fishery Conservation and Management Act to
improve fisheries management.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. YOUNG of Alaska introduced the following bill; which was referred to the
Committee on Resources

A BILL

To amend the Magnuson Fishery Conservation and
Management Act to improve fisheries management.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fishery Conservation
5 and Management Amendments of 1995”.

6 **SEC. 2. AMENDMENT OF THE MAGNUSON FISHERY CON-**
7 **SERVATION AND MANAGEMENT ACT.**

8 Except as otherwise expressly provided, whenever in
9 this Act an amendment or repeal is expressed in terms
10 of an amendment to, or repeal of, a section or other provi-

1 sion, the reference shall be considered to be made to a
2 section or other provision of the Magnuson Fishery Con-
3 servation and Management Act (16 U.S.C. 1801 et seq.).

4 **SEC. 3. FINDINGS, PURPOSES, AND POLICY.**

5 (a) FINDINGS.—Section 2(a) (16 U.S.C. 1801(a)) is
6 amended—

7 (1) in paragraph (2)—

8 (A) by striking “and (B)” and inserting
9 “(B)”; and

10 (B) by inserting before the period at the
11 end the following: “, and (C) losses of essential
12 fishery habitat can diminish the ability of
13 stocks of fish to survive”;

14 (2) in paragraph (6) by inserting after “to in-
15 sure conservation,” the following: “to provide long-
16 term conservation of essential fishery habitat,”; and

17 (3) by adding at the end the following:

18 “(9) Continuing loss of essential fishery habitat
19 poses a long-term threat to the viability of commer-
20 cial and recreational fisheries of the United States.
21 To conserve and manage the fishery resources of the
22 United States, increased attention must be given to
23 the protection of this habitat .”.

24 (b) PURPOSES.—Section 2(b) (16 U.S.C. 1801(b)) is
25 amended—

1 (1) by striking “and” after the semicolon at the
2 end of paragraph (5);

3 (2) by striking the period at the end of para-
4 graph (6) and inserting a semicolon; and

5 (3) by adding at the end the following:

6 “(7) to promote the conservation of essential
7 fishery habitat in the review of projects that affect
8 essential fishery habitat; and

9 “(8) to ensure that conservation and manage-
10 ment decisions with respect to the Nation’s fishery
11 resources are made in a fair and equitable manner.”.

12 (c) POLICY.—Section 2(c)(3) (16 U.S.C. 1801(c)(3))
13 is amended by inserting after “practical measures that”
14 the following: “minimize bycatch and”.

15 **SEC. 4. DEFINITIONS.**

16 Section 3 (16 U.S.C. 1802) is amended—

17 (1) in paragraph (4)—

18 (A) by striking “COLEENTERATA” from the
19 heading of the list of corals and inserting
20 “CNIDARIA”; and

21 (B) in the list appearing under the heading
22 “CRUSTACEA”, by striking “DEEP-SEA RED
23 CRAB-GERYON QUINQUEDENS” and inserting
24 “DEEP-SEA RED CRAB-CHACEON
25 QUINQUEDENS”;

1 (2) in paragraph (16) by striking “of one and
2 one half miles” and inserting “of two and one-half
3 kilometers”;

4 (3) in paragraph (17) by striking “Pacific Ma-
5 rine Fisheries Commission” and inserting “Pacific
6 States Marine Fisheries Commission”;

7 (4) in paragraph (31) by striking “for which a
8 fishery management plan prepared under title III or
9 a preliminary fishery management plan prepared
10 under section 201(h) has been implemented” and in-
11 serting “regulated under this Act”; and

12 (5) by adding at the end the following:

13 “(34) The term ‘bycatch’ means fish which are
14 harvested by a fishing vessel, but which are not sold
15 or kept for personal use, including economic and
16 regulatory discards.

17 “(35) The term ‘economic discards’ means fish
18 which are the target of a fishery, but which are not
19 retained by the fishing vessel which harvested them
20 because they are of an undesirable size, sex, or qual-
21 ity, or for other economic reasons.

22 “(36) The term ‘regulatory discards’ means fish
23 caught in a fishery which fishermen are required by
24 regulation to discard whenever caught, or are re-
25 quired by regulation to retain but not sell.

1 “(37) The term ‘fishery dependent community’
2 means a community which is substantially dependent
3 on the harvest of fishery resources to meet social
4 and economic needs.

5 “(38) The term ‘essential fishery habitat’
6 means those areas necessary to fish for spawning,
7 breeding, or growth to maturity.

8 “(39) The term ‘overfishing’ means a level or
9 rate of fishing mortality that jeopardizes the ability
10 of a stock of fish to produce maximum sustainable
11 yield on a continuing basis.

12 “(40) The term ‘rebuilding program’ means
13 those conservation and management measures nec-
14 essary to restore the ability of a stock of fish to
15 produce maximum sustainable yield on a continuing
16 basis.

17 “(41) The term ‘total allowable catch’ means
18 the total amount of fish in a fishery that may be
19 harvested in a fishing season, as established in ac-
20 cordance with a fishery management plan for the
21 fishery.’’.

22 **SEC. 5. FOREIGN FISHING.**

23 (a) TRANSSHIPMENT PERMITS.—

1 (1) AUTHORITY TO OPERATE UNDER TRANS-
2 SHIPMENT PERMITS.—Section 201(a)(1) (16 U.S.C.
3 1821(a)(1)) is amended to read as follows:

4 “(1) is authorized under subsection (b) or (c) or
5 under a permit issued under section 204(d);”.

6 (2) AUTHORITY TO ISSUE TRANSSHIPMENT
7 PERMITS.—Section 204 (16 U.S.C. 1824) is amend-
8 ed by adding at the end the following:

9 “(d) TRANSSHIPMENT PERMITS.—

10 “(1) AUTHORITY TO ISSUE PERMITS.—The Sec-
11 retary may issue a transshipment permit under this
12 subsection which authorizes a vessel other than a
13 vessel of the United States to engage in fishing con-
14 sisting solely of transporting fish products at sea
15 from a point within the boundaries of any State or
16 the exclusive economic zone to a point outside the
17 United States to any person who—

18 “(A) submits an application which is ap-
19 proved by the Secretary under paragraph (3);
20 and

21 “(B) pays a fee imposed under paragraph
22 (7).

23 “(2) TRANSMITTAL.—Upon receipt of an appli-
24 cation for a permit under this subsection, the Sec-
25 retary shall promptly transmit copies of the applica-

1 tion to the Secretary of the department in which the
2 Coast Guard is operating, any appropriate Council,
3 and any interested State.

4 “(3) APPROVAL OF APPLICATION.—The Sec-
5 retary may approve an application for a permit
6 under this section if the Secretary determines that—

7 “(A) the transportation of fish products to
8 be conducted under the permit, as described in
9 the application, will be in the interest of the
10 United States and will meet the applicable re-
11 quirements of this Act;

12 “(B) the applicant will comply with the re-
13 quirements described in section 201(c)(2) with
14 respect to activities authorized by any permit
15 issued pursuant to the application;

16 “(C) the applicant has established any
17 bonds or financial assurances that may be re-
18 quired by the Secretary; and

19 “(D) vessels of the United States do not
20 have adequate capacity, or will not utilize such
21 capacity, to perform the transportation for
22 which the application is submitted.

23 “(4) WHOLE OR PARTIAL APPROVAL.—The Sec-
24 retary may approve all or any portion of an applica-
25 tion under paragraph (3).

1 “(5) FAILURE TO APPROVE APPLICATION.—If
2 the Secretary does not approve any portion of an ap-
3 plication submitted under paragraph (1), the Sec-
4 retary shall promptly inform the applicant and speci-
5 fy the reasons therefor.

6 “(6) CONDITIONS AND RESTRICTIONS.—The
7 Secretary shall establish and include in each permit
8 under this subsection conditions and restrictions
9 which shall be complied with by the owner and oper-
10 ator of the vessel for which the permit is issued. The
11 conditions and restrictions shall include the require-
12 ments, regulations, and restrictions set forth in sub-
13 section (b)(7).

14 “(7) FEES.—The Secretary shall collect a fee
15 for each permit issued under this subsection, in an
16 amount adequate to recover the costs incurred by
17 the United States in issuing the permit.”.

18 (b) FOREIGN FISHING FOR ATLANTIC HERRING AND
19 ATLANTIC MACKEREL.—Section 201(f) (16 U.S.C.
20 1801(f)) is amended to read as follows:

21 “(f) FOREIGN FISHING FOR ATLANTIC HERRING
22 AND ATLANTIC MACKEREL.—

23 “(1) The Congress finds that sufficient United
24 States harvesting capacity exists and will continue to
25 exist at least through 1999 in the Atlantic herring

1 and Atlantic mackerel fisheries so that no surplus
2 exists in those fisheries under the United Nations
3 Convention on the Law of the Sea.

4 “(2) No allocation of Atlantic herring or Atlan-
5 tic mackerel may be made under subsection (e) be-
6 fore March 17, 1999.”.

7 (c) PERIOD FOR CONGRESSIONAL REVIEW OF GOV-
8 ERNING INTERNATIONAL FISHERY AGREEMENTS.—Sec-
9 tion 203 (16 U.S.C. 1823) is amended—

10 (1) in subsection (a) by striking “60 calendar
11 days of continuous session of the Congress” and in-
12 serting “120 calendar days (excluding any days in a
13 period for which the Congress is adjourned sine
14 die)”;

15 (2) by striking subsection (c); and

16 (3) by redesignating subsection (d) as sub-
17 section (c).

18 (d) TECHNICAL CORRECTION.—

19 (1) CORRECTION.—Section 201(e)(1)(E)(iv) (16
20 U.S.C. 1821(e)(1)(E)(iv)) is amended by inserting
21 “or special areas” after “the exclusive economic
22 zone”.

23 (2) APPLICATION.—The amendment made by
24 paragraph (1) shall take effect on the date it would
25 take effect if it were enacted by section 301(d)(2) of

1 the Act entitled “An Act to provide for the designa-
2 tion of the Flower Garden Banks National Marine
3 Sanctuary”, approved March 9, 1992 (Public Law
4 102–251; 106 Stat. 63).

5 **SEC. 6. LARGE-SCALE DRIFT NET FISHING.**

6 Section 206(e) (16 U.S.C. 1826(e)) is amended to
7 read as follows:

8 “(e) REPORT.—Not later than March 17th of each
9 year, the Secretary, after consultation with the Secretary
10 of State and the Secretary of the department in which the
11 Coast Guard is operating, shall submit to the Committee
12 on Commerce, Science, and Transportation of the Senate
13 and the Committee on Resources of the House of Rep-
14 resentatives a list of those nations whose nationals or ves-
15 sels conduct, and of those nations that authorize their na-
16 tionals to conduct, large-scale drift net fishing beyond the
17 exclusive economic zone of any nation in a manner that
18 diminishes the effectiveness of, or is inconsistent with, any
19 international agreement governing large-scale drift net
20 fishing to which the United States is a party or otherwise
21 subscribes.”.

1 **SEC. 7. NATIONAL STANDARD FOR FISHERY CONSERVA-**
2 **TION AND MANAGEMENT TO MINIMIZE**
3 **BYCATCH.**

4 Section 301(a) (16 U.S.C. 1851(a)) is amended by
5 adding at the end the following:

6 “(8) Conservation and management measures
7 shall, to the extent practicable, minimize bycatch.”.

8 **SEC. 8. REGIONAL FISHERY MANAGEMENT COUNCILS.**

9 (a) CONFORMING AMENDMENT.—Section
10 302(k)(1)(A) (16 U.S.C. 1852(k)(1)(A)) is amended to
11 read as follows:

12 “(A) is nominated by the Governor of a State
13 for appointment as a voting member of a Council in
14 accordance with subsection (b)(2) or is designated
15 by the Governor of a State under subsection
16 (b)(1)(A) and is not an employee of the State;”.

17 (b) VOTING MEMBERS, GENERALLY.—Section
18 302(b) (16 U.S.C. 1852(b)) is amended by adding at the
19 end the following:

20 “(6) The Secretary shall remove any member of a
21 Council required to be appointed by the Secretary in ac-
22 cordance with subsection (b)(2) if the member violates sec-
23 tion 307(1)(O).”.

24 (c) COMPENSATION.—

25 (1) AMENDMENT.—Section 302(d) (16 U.S.C.
26 1852(d)) is amended in the first sentence—

1 (A) by striking “each Council,” and insert-
2 ing “each Council who are required to be ap-
3 pointed by the Secretary and”; and

4 (B) by striking “shall, until January 1,
5 1992,” and all that follows through “GS-16”
6 and inserting the following: “shall receive com-
7 pensation at a daily rate equivalent to the low-
8 est rate of pay payable for GS-15,”.

9 (2) EFFECTIVE DATE.—The amendment made
10 by paragraph (1)(B) shall take effect on January 1,
11 1996.

12 (d) TRANSACTION OF BUSINESS.—Section 302(e)
13 (16 U.S.C. 1852(e)) is amended by adding at the end the
14 following:

15 “(5) At the request of any voting member of a
16 Council, the Council shall hold a roll call vote on any
17 matter before the Council. The official minutes and
18 other appropriate records of any Council meeting
19 shall identify all roll call votes held, the name of
20 each voting member present during each roll call
21 vote, and how each member voted on each roll call
22 vote.”.

23 (e) COMMUNICATIONS WITH FEDERAL AGENCIES
24 REGARDING ESSENTIAL AND OTHER FISHERY HABITAT.—Section 302(i) (16 U.S.C. 1852(i)) is amended—
25

1 (1) in paragraph (1), by striking “and” after
2 the semicolon at the end of subparagraph (A) and
3 striking the period at the end of subparagraph (B)
4 and inserting “; and”;

5 (2) by adding at the end of paragraph (1) the
6 following:

7 “(C) shall notify the Secretary regarding, and
8 may comment on and make recommendations to any
9 State or Federal agency concerning, any activity un-
10 dertaken, or proposed to be undertaken, by any
11 State or Federal agency that, in the view of the
12 Council, may have a detrimental effect on the essen-
13 tial fishery habitat of a fishery under its jurisdic-
14 tion.”; and

15 (3) by amending paragraph (2) to read as
16 follows:

17 “(2) Within 15 days after receiving a comment or
18 recommendation under paragraph (1) from a Council re-
19 garding the effects of an activity on essential fishery habi-
20 tat, a Federal agency shall provide to the Council a de-
21 tailed response in writing. The response shall include a
22 description of measures being considered by the agency
23 for avoiding, mitigating, or offsetting the impact of the
24 activity on such habitat. In the case of a response that
25 is inconsistent with the recommendations of the Council,

1 the Federal agency shall explain its reasons for not follow-
2 ing the recommendations.”.

3 (h) PROCEDURAL MATTERS.—Section 302(j)(2) (16
4 U.S.C. 1852(j)(2)) is amended—

5 (1) by striking “guidelines” and inserting
6 “shall”;

7 (2) in subparagraph (C), by inserting after
8 “fishery)” the following: “sufficiently in advance of
9 the meeting to allow meaningful public participation
10 in the meeting.”;

11 (3) by adding at the end of subparagraph (D)
12 the following: “The written statement or oral testi-
13 mony shall include a brief description of the quali-
14 fications and interests of the person in the subject
15 of the written statement or oral testimony.”;

16 (4) by amending subparagraph (E) to read as
17 follows:

18 “(E) Detailed minutes of each meeting of the
19 Council shall be kept and shall contain a record of
20 the persons present, a complete and accurate de-
21 scription of matters discussed and conclusions
22 reached, and copies of all reports received, issued, or
23 approved by the Council. The Chairman shall certify
24 the accuracy of the minutes of each meeting and
25 submit a copy thereof to the Secretary. The minutes

1 shall be made available to any court of competent
2 jurisdiction.”; and

3 (5) by adding at the end the following:

4 “(G) A Council member may add an item to the
5 agenda of a meeting of a Council or of a committee
6 or advisory panel of a Council by presenting to the
7 Chairman of the Council, committee, or panel, at
8 least 21 days before the date of the meeting, a writ-
9 ten description of the item signed by 2 or more vot-
10 ing members of the Council.”.

11 (i) DISCLOSURE OF FINANCIAL INTEREST AND
12 RECUSAL.—Section 302(k) (16 U.S.C. 1852(k)) is
13 amended—

14 (1) in the heading by inserting “AND RECUSAL”
15 before the period;

16 (2) in paragraph (1)—

17 (A) in subparagraph (A) by inserting “or”
18 after the semicolon at the end;

19 (B) in subparagraph (B) by striking “; or”
20 at the end and inserting a period; and

21 (C) by striking subparagraph (C);

22 (3) in paragraph (3)(B) by striking “or (C)”;

23 (4) in paragraph (5)—

24 (A) in subparagraph (A) by striking “and”
25 at the end;

1 (B) in subparagraph (B) by striking the
2 period at the end and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(C) be kept on file by the Secretary for
5 use in reviewing Council actions and made
6 available by the Secretary for public inspection
7 at reasonable hours.”;

8 (5) in paragraph (6) by striking “or (c)”;

9 (6) in paragraph (7) by striking “or (C)”;

10 (7) by adding at the end the following:

11 “(8) The Secretary, in consultation with the Councils,
12 and not later than January 1, 1996, shall establish rules
13 which prohibit an affected individual from voting on a
14 matter in which the individual or any other person de-
15 scribed in paragraph (2) with respect to the individual has
16 an interest that would be significantly affected. The rules
17 may include provisions which take into account the dif-
18 ferences in fisheries.

19 “(9) A voting member of a Council shall recuse him-
20 self or herself from voting if—

21 “(A) voting by the member would violate the
22 rules established under paragraph (8); or

23 “(B) the General Counsel of the National Oce-
24 anic and Atmospheric Administration (or a designee
25 of the General Counsel under paragraph (10)(C)(ii))

1 determines under paragraph (10) that voting by the
2 member would violate the rules established under
3 paragraph (8).

4 “(10)(A) Before any vote held by a Council on any
5 matter, a voting member of the Council may, at a meeting
6 of the Council, request the General Counsel of the Na-
7 tional Oceanic and Atmospheric Administration (or a des-
8 ignee of the General Counsel under subparagraph (C)(ii))
9 to determine whether voting on the matter by the member,
10 or by any other member of the Council, would violate the
11 rules established under paragraph (8).

12 “(B) Upon a request under subparagraph (A) regard-
13 ing voting on a matter by a member—

14 “(i) the General Counsel of the National Oce-
15 anic and Atmospheric Administration (or a designee
16 of the General Counsel under subparagraph (C)(ii))
17 shall determine and state whether the voting would
18 violate the rules established under paragraph (8), at
19 the meeting at which the request is made; and

20 “(ii) no vote on the matter may be held by the
21 Council before the determination and statement are
22 made.

23 “(C) The General Counsel of the National Oceanic
24 and Atmospheric Administration shall—

25 “(i) attend each meeting of a Council; or

1 “(ii) designate an individual to attend each
2 meeting of a Council for purposes of this paragraph.

3 “(11) For the purposes of this subsection, the term
4 ‘an interest that would be significantly affected’ means a
5 personal financial interest which would be augmented by
6 voting on the matter and which would only be shared by
7 a minority of other persons within the same industry sec-
8 tor or gear group whose activity would be directly affected
9 by a Council’s action.”.

10 **SEC. 9. CONTENTS OF FISHERY MANAGEMENT PLANS.**

11 (a) REQUIRED PROVISIONS.—

12 (1) NEW REQUIREMENTS.—Section 303(a) (16
13 U.S.C. 1853(a)) is amended—

14 (A) in paragraph (5) by striking “and the
15 estimated processing capacity of, and the actual
16 processing capacity utilized by, United States
17 fish processors,” and inserting the following:
18 “the amount (in numbers or weight) and spe-
19 cies of bycatch taken on board a fishing vessel,
20 and the estimated processing capacity of, and
21 the actual processing capacity utilized by, Unit-
22 ed States fish processors;”;

23 (B) by amending paragraph (7) to read as
24 follows:

1 “(7) include a description of essential fishery
2 habitat for the fishery and conservation and man-
3 agement measures necessary to minimize adverse
4 impacts on that habitat caused by fishing;”;

5 (C) in paragraph (8) by striking “and”
6 after the semicolon at the end;

7 (D) in paragraph (9) by striking the period
8 at the end and inserting a semicolon; and

9 (E) by adding at the end the following:

10 “(10) include a measurable and objective deter-
11 mination of what constitutes overfishing in that fish-
12 ery, and a rebuilding program in the case of a plan
13 for any fishery which the Council or the Secretary
14 has determined is overfished;

15 “(11) include conservation and management
16 measures necessary to minimize bycatch to the ex-
17 tent practicable, including, as appropriate, incentives
18 and harvest preferences within a fishing gear group
19 to promote avoidance of bycatch;

20 “(12) to the extent practicable, minimize mor-
21 tality caused by economic and regulatory discards in
22 the fishery; and

23 “(13) take into account the safety of human life
24 at sea.”.

1 (2) AMENDMENT OF PLANS.—Not later than
2 one year after the date of enactment of this Act,
3 each Regional Fishing Management Council estab-
4 lished under the Magnuson Fishing Conservation
5 and Management Act shall submit to the Secretary
6 of Commerce an amendment to each fishery man-
7 agement plan in effect under that Act to comply
8 with the amendments made by paragraph (1).

9 (b) AMENDMENTS RELATING TO DISCRETIONARY
10 PROVISIONS, GENERALLY.—Section 303(b) (16 U.S.C.
11 1853(b)) is amended—

12 (1) in paragraph (8) in the matter preceding
13 the first semicolon, by striking “require that observ-
14 ers” and inserting “require that one or more observ-
15 ers”;

16 (2) in paragraph (9) by striking “and” after
17 the semicolon;

18 (3) by redesignating paragraph (10) as para-
19 graph (11); and

20 (4) by inserting after paragraph (9) the follow-
21 ing:

22 “(10) assess and specify the effect which con-
23 servation and management measures of the plan will
24 have on stocks of fish in the ecosystem of the fishery
25 which are not part of the fishery;

1 “(11) contain conservation and management
2 measures reserving a portion of the total allowable
3 catch for the use of fishery dependent communities;
4 and”.

5 **SEC. 10. AMENDMENTS RELATING TO MISCELLANEOUS DU-**
6 **TIES OF SECRETARY.**

7 (a) SAFETY AT SEA.—Section 304(a)(2)(C) (16
8 U.S.C. 1854(a)(2)(C)) is amended by striking “to fishery
9 access” and all that follows through the period and insert-
10 ing “with respect to the provisions of sections 303(a)(6)
11 and (13).”.

12 (b) HIGHLY MIGRATORY SPECIES.—Section 304(f)
13 (16 U.S.C. 1854(f)) is amended—

14 (1) by striking the subsection heading and in-
15 serting the following: “FISHERIES UNDER AUTHOR-
16 ITY OF MORE THAN ONE COUNCIL.—”;

17 (2) in paragraph (3)(C)(ii) by inserting before
18 the semicolon the following: “and the plan develop-
19 ment team established under paragraph (4)”;

20 (3) in paragraph (3)(E), strike “allocation or
21 quota” each place it appears and insert “allocation,
22 quota, or fishing mortality level”;

23 (4) in paragraph (3)(F)(ii) by inserting “and
24 the plan development team established under para-
25 graph (4)” before the semicolon; and

1 (5) by adding at the end the following:

2 “(4)(A) The Secretary shall establish a plan de-
3 velopment team for each highly migratory species
4 fishery to advise the Secretary on and participate in
5 the development of each fishery management plan or
6 amendment to a plan for the fishery under this sub-
7 section.

8 “(B) The plan development team shall—

9 “(i) consist of not less than 7 individuals
10 who are members of an advisory committee or
11 a species working group established under sec-
12 tion 4 or 4A, respectively, of the Atlantic Tunas
13 Convention Act of 1975 and who are knowl-
14 edgeable about the fishery for which the plan is
15 being developed; and

16 “(ii) participate in all aspects of the devel-
17 opment of the plan or amendment developed by
18 the Secretary under this subsection.

19 “(C) The Federal Advisory Committee Act (5
20 U.S.C. App.) shall not apply to any plan develop-
21 ment team established under this paragraph.”.

22 (c) INCIDENTAL HARVEST RESEARCH.—Section
23 304(g)(1) (16 U.S.C. 1854(g)(1)) is amended by striking
24 “3-year”.

1 (d) ESSENTIAL FISHERY HABITAT; OVERFISHING.—
2 Section 304 (16 U.S.C. 1854) is further amended by add-
3 ing at the end the following:

4 “(h) ACTIONS OF THE SECRETARY ON ESSENTIAL
5 FISHERY HABITAT.—(1) The Secretary, in cooperation
6 with the Secretary of the Interior, shall identify the essen-
7 tial fishery habitat for each fishery for which a fishery
8 management plan is in effect. The identification shall be
9 based on the description of essential fishery habitat con-
10 tained in the plan. The identification shall be provided to
11 the appropriate Council and made available to the public.

12 “(2) If the Secretary receives information from a
13 Council or determines from other sources that an action
14 authorized, funded, carried out, or proposed to be carried
15 out by any Federal agency may result in the destruction
16 or adverse modification of any essential fishery habitat
17 identified under paragraph (1), the Secretary shall com-
18 ment on and make recommendations to the Federal agen-
19 cy concerning that action.

20 “(3) Within 15 days after receiving a comment or
21 recommendation from the Secretary under paragraph (2),
22 the Federal agency shall provide a detailed response, in
23 writing, to the Secretary which includes a description of
24 measures being considered by the agency for avoiding,
25 mitigating, or offsetting the adverse impact of the activity

1 of the agency on essential fishery habitat. In the case of
2 a response that is inconsistent with a recommendation
3 from the Secretary, the Federal agency shall explain the
4 reasons for not following the recommendations.

5 “(4) Nothing in this subsection shall have the effect
6 of amending or repealing any other law or regulation or
7 modifying any other responsibility of a Federal agency
8 with respect to fisheries habitat.

9 “(i) ACTION BY THE SECRETARY ON
10 OVERFISHING.—(1) In addition to the authority granted
11 to the Secretary under subsection (c), if the Secretary
12 finds at any time that overfishing is occurring or has oc-
13 curred in any fishery, the Secretary shall immediately no-
14 tify the appropriate Council and request that action be
15 taken to halt overfishing in the fishery and to establish
16 a program to rebuild the fishery within a reasonable time.
17 The Secretary shall publish each notification under this
18 paragraph in the Federal Register.

19 “(2) If the Council does not submit to the Secretary
20 a fishery management plan, or an amendment to the ap-
21 propriate existing fishery management plan, which is in-
22 tended to address overfishing in the fishery and to estab-
23 lish any necessary rebuilding program before the end of
24 the 1-year period beginning on the date of notification
25 under paragraph (1), then the Secretary shall prepare

1 under subsection (c) a fishery management plan, or an
2 amendment to an existing management plan, to halt
3 overfishing in the fishery and to establish any necessary
4 rebuilding program.

5 “(3) If the Secretary finds that overfishing is occur-
6 ring in any fishery for which a fishery management plan
7 prepared by the Secretary is in effect, the Secretary shall
8 act under subsection (c) to amend the plan to halt
9 overfishing in the fishery and to establish any necessary
10 rebuilding program.

11 “(4) If the Secretary finds that the action of any Fed-
12 eral agency has caused or contributed to the decline of
13 a stock of fish below maximum sustainable yield, the Sec-
14 retary shall notify the agency of the Secretary’s finding
15 and recommend steps that can be taken by the agency to
16 reverse that decline.

17 “(j) ACTION ON COVERED IMPLEMENTING REGULA-
18 TIONS PROPOSED BY A COUNCIL.—(1) After the receipt
19 date of a covered implementing regulation submitted by
20 a Council, the Secretary shall—

21 “(A) immediately commence a review of the
22 covered implementing regulation to determine wheth-
23 er it is consistent with the fishery management plan
24 it would implement, the national standards, the

1 other provisions of this Act, and any other applicable
2 law; and

3 “(B) immediately publish the covered imple-
4 menting regulation in the Federal Register and pro-
5 vide a 30-day period for the submission of comments
6 by the public.

7 “(2) Not later than 60 days after the receipt date
8 of a covered implementing regulation submitted by a
9 Council, the Secretary shall—

10 “(A) publish a final regulation on the subject
11 matter of the covered implementing regulation; or

12 “(B) decline to publish a final regulation.

13 “The Secretary shall provide to the Council in writing an
14 explanation of the reasons for the Secretary’s action.

15 “(3) For the purposes of this subsection, the term—

16 “(A) ‘receipt date’ means the 5th day after the
17 day on which a Council submits to the Secretary a
18 covered implementing regulation that the Council
19 characterizes as a final covered implementing regula-
20 tion; and

21 “(B) ‘covered implementing regulation’—

22 “(i) means a proposed amendment to exist-
23 ing regulations implementing a fishery manage-
24 ment plan in effect under this Act, which does
25 not have the effect of amending the plan; and

1 “(ii) does not include any proposed regula-
2 tion submitted with a plan or amendment to a
3 plan under section 303(c).”.

4 **SEC. 11. EMERGENCY ACTIONS.**

5 Section 305(c) (16 U.S.C. 1855(c)) is amended—

6 (1) by amending paragraph (3)(B) to read as
7 follows:

8 “(B) shall remain in effect for not more than
9 180 days after the date of such publication, except
10 that any such regulation may, by agreement of the
11 Secretary and the Council and after notice and an
12 opportunity for submission of comments by the pub-
13 lic, be effective for 1 additional period of not more
14 than 180 days; and”; and

15 (2) by adding at the end the following:

16 “(4) The Secretary may promulgate emergency regu-
17 lations under this subsection to protect the public health.
18 Notwithstanding paragraph (3), regulations promulgated
19 under this paragraph shall remain in effect until with-
20 drawn by the Secretary. The Secretary shall promptly
21 withdraw regulations under this paragraph when the cir-
22 cumstances requiring the regulations no longer exist. The
23 Secretary shall provide an opportunity for submission of
24 comments by the public after regulations are promulgated
25 under this paragraph.”.

1 **SEC. 12. STATE JURISDICTION.**

2 Section 306(c)(1) (16 U.S.C. 1856(c)(1)) is amend-
3 ed—

4 (1) by striking “and” at the end of subpara-
5 graph (A);

6 (2) by striking the period at the end of sub-
7 paragraph (B) and inserting “; and”; and

8 (3) by adding at the end the following:

9 “(C) the owner or operator of the vessel
10 submits to the appropriate Council, in a man-
11 ner prescribed by the Secretary, periodic re-
12 ports on the tonnage of fish received from ves-
13 sels of the United States and the locations from
14 which such fish were harvested.”.

15 **SEC. 13. PROHIBITED ACTS.**

16 (a) FAILURE TO DISCLOSE FINANCIAL INFORMA-
17 TION.—Section 307(1) (16 U.S.C. 1857(1)) is amended—

18 (1) by striking “or” at the end of subparagraph
19 (M);

20 (2) by striking the period at the end of sub-
21 paragraph (N) and inserting “; or”; and

22 (3) by adding at the end the following:

23 “(O) to knowingly and willfully fail to dis-
24 close or falsely disclose any financial interest as
25 required under section 302(k) or to knowingly

1 violate any rule established under section
2 302(k)(8).”.

3 (b) PROHIBITED FISHING.—

4 (1) IN GENERAL.—Section 307(2)(B) (16
5 U.S.C. 1857(2)(B)) is amended to read as follows:

6 “(B) in fishing, except recreational fishing
7 permitted under section 201(j), within the ex-
8 clusive economic zone or within the special
9 areas, or for any anadromous species or Con-
10 tinental Shelf fishery resources beyond such
11 zone or areas, or in fishing consisting of trans-
12 porting fish products from a point within the
13 boundaries of any State or the exclusive eco-
14 nomic zone or the special areas, unless such
15 fishing is authorized under, and conducted in
16 accordance with, a valid and applicable permit
17 issued under section 204, except that this sub-
18 paragraph shall not apply to fishing within the
19 special areas (as that term is defined in the
20 amendment set forth in section 301(b)(2) of the
21 Act entitled “An Act to provide for the designa-
22 tion of the Flower Garden Banks National Ma-
23 rine Sanctuary”, approved March 9, 1992
24 (Public Law 102–251; 106 Stat. 62)) before
25 the date on which the Agreement between the

1 United States and the Union of Soviet Socialist
 2 Republics on the Maritime Boundary, signed
 3 June 1, 1990, enters into force for the United
 4 States; or”.

5 (2) CONFORMING AMENDMENT.—Section
 6 301(h)(2)(A) of the Act entitled “An Act to provide
 7 for the designation of the Flower Garden Banks Na-
 8 tional Marine Sanctuary”, approved March 9, 1992
 9 (Public Law 102–251; 106 Stat. 64), is repealed.

10 **SEC. 14. NORTH PACIFIC FISHERIES CONSERVATION.**

11 Section 313(16 U.S.C. 1862) is amended—

12 (1) by striking “**RESEARCH PLAN**” in the
 13 section heading and inserting “**CONSERVA-**
 14 **TION**”; and

15 (2) by adding at the end the following:

16 “(f) REDUCTION OF WASTE.—

17 “(1) No later than July 1, 1996, the North Pa-
 18 cific Fishery Management Council shall recommend
 19 for each fishery management plan under its jurisdic-
 20 tion conservation and management measures, includ-
 21 ing incentives, to reduce bycatch in each fishery.
 22 Any such system of incentives shall be fair and equi-
 23 table to all fishermen and United States fish proc-
 24 essors, and shall not have economic allocation as its
 25 sole purpose.

1 “(2) Not later than July 1, 1997, the North
2 Pacific Fishery Management Council shall rec-
3 ommend conservation and management measures to
4 ensure total catch measurement in each fishery
5 under the Council’s jurisdiction. Such conservation
6 and management measures shall ensure the accurate
7 enumeration of target species, economic discards,
8 and regulatory discards.

9 “(3) The conservation and management meas-
10 ures recommended by the Council under paragraph
11 (1) may include a harvest preference to fishing and
12 processing practices within each gear group that re-
13 sult in the lowest levels of economic discards, proc-
14 essing waste, regulatory discards, and other bycatch.
15 In determining which practices shall be given prior-
16 ity, the reduction of economic discards shall be given
17 the greatest weight, followed by processing waste
18 (where applicable), regulatory discards and other
19 bycatch, in that order.

20 “(4) In determining the level of target species
21 catch, economic discard, regulatory discards, other
22 bycatch, and processing waste, the Council and Sec-
23 retary shall base such determinations on observer
24 data or the best available information.

1 “(g) DEFINITION.—For the purposes of this section
2 the term ‘processing waste’ means that portion of a fish
3 which is processed and which could be used for human
4 consumption or other commercial use, but which is not
5 so used.”.

6 **SEC. 15. OBSERVERS.**

7 Title III of the Magnuson Fishery Conservation and
8 Management Act (16 U.S.C. 1801 et seq.) is amended by
9 adding at the end the following:

10 **“SEC. 315. RIGHTS OF OBSERVERS.**

11 “(a) CIVIL ACTION.—An observer on a vessel (or the
12 observer’s personal representative) under the requirements
13 of this Act or the Marine Mammal Protection Act of 1972
14 (16 U.S.C. 1361 et seq.) that is ill, disabled, injured, or
15 killed from service as an observer on that vessel may not
16 bring a civil action under any law of the United States
17 for that illness, disability for that illness, disability, injury,
18 or death against the vessel or vessel owner, except that
19 a civil action may be brought against the vessel owner for
20 the owner’s willful misconduct.

21 “(b) EXCEPTION.—Subsection (a) does not apply if
22 the observer is engaged by the owner, master, or individual
23 in charge of a vessel to perform any duties in service to
24 the vessel.”.

1 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—Title IV of the Magnuson Fishery
3 Conservation and Management Act (90 Stat. 359–361) is
4 amended to read as follows:

5 **“TITLE IV—MISCELLANEOUS**
6 **PROVISIONS**

7 **“SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

8 “There are authorized to be appropriated to the Sec-
9 retary, for carrying out this Act, the following:

10 “(1) \$106,000,000 for fiscal year 1994.

11 “(2) \$110,000,000 for fiscal year 1995.

12 “(3) \$114,000,000 for fiscal year 1996.

13 “(4) \$118,000,000 for fiscal year 1997.

14 “(5) \$122,000,000 for fiscal year 1998.

15 “(6) \$126,000,000 for fiscal year 1999.”.

16 (b) CLERICAL AMENDMENT.—The table of contents
17 in the first section of the Magnuson Fishery Conservation
18 and Management Act is amended by striking the items
19 relating to title IV and the sections in that title and insert-
20 ing the following:

“TITLE IV—MISCELLANEOUS PROVISIONS

“Sec. 401. Authorization of appropriations.”.

21 **SEC. 17. TECHNICAL CORRECTION.**

22 (a) CORRECTION.—Section 304 of the Act entitled
23 “An Act to provide for the designation of the Flower Gar-

1 den Banks National Marine Sanctuary”, approved March
2 9, 1992 (Public Law 102–251; 106 Stat. 65), is repealed.

3 (b) CONFORMING AMENDMENT.—Section 3(15) of
4 the Marine Mammal Protection Act of 1972 (16 U.S.C.
5 1362(15)) is amended to read as follows:

6 “(15) The term ‘waters under the jurisdiction of the
7 United States means—

8 “(A) the territorial sea of the United States;

9 “(B) the waters included within a zone, contig-
10 uous to the territorial sea of the United States, of
11 which the inner boundary is a line coterminous with
12 the seaward boundary of each coastal State, and the
13 outer boundary is a line drawn in such a manner
14 that each point on it is 200 nautical miles from the
15 baseline from which the territorial sea is measured;
16 and

17 “(C) the areas referred to as eastern special
18 areas in Article 3(1) of the Agreement between the
19 United States of America and the Union of Soviet
20 Socialist Republics on the Maritime Boundary,
21 signed June 1, 1990; in particular, those areas east
22 of the maritime boundary, as defined in that Agree-
23 ment, that lie within 200 nautical miles of the base-
24 lines from which the breadth of the territorial sea of
25 Russia is measured but beyond 200 nautical miles of

1 the baselines from which the breadth of the terri-
2 torial sea of the United States is measured, except
3 that this subparagraph shall not apply before the
4 date on which the Agreement between the United
5 States and the Union of Soviet Socialist Republics
6 on the Maritime Boundary, signed June 1, 1990, en-
7 ters into force for the United States.”.



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